

**BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS  
STATE OF TENNESSEE**

<b>DEPT. OF FINANCIAL INSTITUTIONS,</b>	)	
<b>COMPLIANCE DIVISION,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No.: 06-17-C</b>
	)	
<b>HIGHWAY 64 MOTOR COMPANY</b>	)	
<b>TITLE LOANS,</b>	)	
	)	
<b>Respondent.</b>	)	

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**FINAL ORDER**

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**THIS CAUSE** comes before the commissioner upon the Motion of the Compliance Division ("Division") of the Tennessee Department of Financial Institutions for entry of a Final Order granting the relief sought by the Division in its Petition.

A copy of the Notice of the Rights of the Respondent ("Notice") and Verified Petition ("Petition") were hand delivered to the Respondent at its address of record with the Division (copies of the Notice and Petition are attached hereto and marked as Exhibit 1).

Both the Notice and Petition required the Respondent to make a written request to the Commissioner for a contested case hearing disputing the Division's allegations within thirty (30) days of receipt of the Petition and Order. As of this date, the Respondent has not made a written request for a hearing nor has it filed a completed application for a Title Pledge Lender license.

## **I. REVIEW OF FINAL ORDER**

Tenn. Code Ann. § 4-5-317(a) provides, in pertinent part, that “any party, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested.”

Tenn. Code Ann. § 4-5-317(c) provides that:

[t]he person or persons who rendered the initial or final order, which is the subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings; or granting the petition and issuing a new order, initial or final, in accordance with § 4-5-314. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied.

Tenn. Code Ann. § 4-5-322 provides that a person who is aggrieved by a final decision in a contested case is entitled to judicial review under Title 4, Chapter 5, and that proceedings for review are instituted by filing a petition for review in the Chancery Court of Davidson County. Tenn. Code Ann. § 4-5-322 further provides such petition shall be filed within sixty (60) days after the entry of the agency’s final order thereon.

A petition for reconsideration of the final order should be filed with the Commissioner at the following address:

Greg Gonzales, Acting Commissioner  
Tennessee Dept. of Financial Institutions  
4<sup>th</sup> Floor, Nashville City Center  
511 Union Street  
Nashville, Tennessee 37219  
Telephone: (615) 741-2236 Fax: (615) 253-1875

## **II. FINDINGS OF FACT**

1. Tenn. Code Ann. §§ 45-1-104 and 105 place responsibility upon the Commissioner for administration of the provisions of the Tennessee Title Pledge Act of 1995 (“Act”), as amended at Tenn. Code Ann. § 45-15-101 *et seq.* The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Highway 64 Motor Company, Title Loans is an unlicensed title pledge lender in the state of Tennessee. Highway 64 Motor Company Title Loans’ primary place of business is located at 593 Mulberry Avenue, Selmer, Tennessee 38375.

3. As of June 2005 Highway 64 Motor Company Title Loans had a business license as a title pledge lender issued by the McNairy County Tennessee Clerk.

4. On June 17, 2005 Commissioner Kevin Lavender sent to each of the 931 title pledge lenders identified through the various Tennessee County Clerks, including Highway 64 Motor Company Title Loans, a memorandum summarizing the requirements of the newly amended Title Pledge Act along with a complete copy of the Act, HB 1784/SB 2025, and an information gathering checklist. A copy of this memorandum is attached as Exhibit 4.

5. On June 24, 2005, Commissioner Kevin Lavender sent to each of the 931 title pledge lenders identified through the various Tennessee County Clerks, including Highway 64 Motor Company Title Loans, an announcement regarding Title Pledge Informational Workshops to be conducted on different dates in Nashville, Memphis, and Knoxville. A copy of the announcement is attached as Exhibit 5.

6. The Department conducted information gathering exams of companies known to be engaging in the business of title pledge lending during the months of August and September 2005.

7. An information gathering examination of Highway 64 Motor Company Title Loans was conducted by Division Examiner Kevin Hicks on August 22, 2005. A copy of this examination report was signed by the Manager Russell Haynie, noting several violations.

8. Additionally, on October 7, 2005, Compliance Division Director Stephen Henley sent application packets to all title pledge lenders identified through the county clerks and the information gathering examination process, including Highway 64 Motor Company Title Loans. These packets were mailed in mid-October 2005. A copy of the application packet is attached as Exhibit 6.

9. This application packet included another copy of the Title Pledge Act as well as a Memorandum that included the following statement: "If you are currently engaged in the business of title pledge lending under a license issued by the county clerk and you file your application with the Department by December 31, 2005, you may continue to operate until the Commissioner has acted upon your application. Otherwise, applicants not licensed by the county clerk must cease operations on November 1, 2005 and cannot resume until they first obtain a license from the Department." See Exhibit 6.

10. On February 7, 2006, Division Examiners K. Rial and Alisa Logan conducted a full scope examination of Highway 64 Motor Company Title Loans. At this examination, Examiners Rial and Logan determined that Highway 64 Motor Company

Title Loans was operating as a title pledge lender without a license or having submitted a timely application for a license.

11. This examination report was signed by Highway 64 Motor Company Title Loans manager Russell Haynie who was also given a copy of the report.

12. This examination report noted in writing the following: "The lender was operating without a valid license. T.C.A. 45-15-105(a)."

13. Sometime after the February examination, Highway 64 Motor Company Title Loans submitted an incomplete application. On March 7, 2006 the Department returned the application to Highway 64 Motor Company Title Loans noting the deficiencies in the application. See notice attached hereto as Exhibit 7.

14. Highway 64 responded to the February 7, 2006 examination finding by letter dated April 10, 2006. One sentence in the letter stated that Highway 64 had sent in all required paper and funds to the state for a new license. However, the Department had never received a completed application. In addition, as of April 10, 2006 the incomplete application had been returned to Highway 64.

15. The Department attempted to call Russell Haynie, the owner of Highway 64, at the business phone numbers as well as his home number to notify him that the Department had never received a complete application. However the Department was unable to reach Mr. Haynie. Therefore, the Department had a letter hand delivered to Mr. Haynie on July 13, 2006 notifying him that he was operating without a license and that the Department had never received a completed application. A copy of this letter is attached hereto as Exhibit 8.

16. The Department issued a Verified Petition and Notice of Opportunity for a Hearing and Rights of the Respondent on July 27, 2006. The Verified Petition and Notice of Opportunity for a Hearing were served on Mr. Haynie by hand delivery by Examiner Kevin Hicks on July 31, 2006. (See Exhibit 1.)

17. In response to the Verified Petition, Mr. Haynie submitted a second application for a title pledge license for Highway 64. The Department received the second application for a title pledge license on August 30, 2006; however, again, the application was incomplete. Director Stephen Henley sent a letter to Mr. Haynie dated October 2, 2006 detailing the deficiencies in the application. (See Exhibit 3.) Mr. Haynie did not request a hearing when he submitted the second application.

18. Even after the fact-finding examination of August 22, 2005, full scope examination of February 7, 2006 and the issuance of the Verified Petition, as of this date Highway 64 Motor Company Title Loans has not filed a completed application for a title pledge license with the Department nor has it requested a hearing.

### **III. CONCLUSIONS OF LAW**

19. Tenn. Code Ann. § 45-1-107(a)(4) provides that the Commissioner may “[o]rder any person to cease violating a provision of this title or lawful regulation issued under this title.”

20. Tenn. Code Ann. § 45-1-107(c) provides that:

Notice and opportunity for a hearing shall be provided in advance of any of the foregoing actions in this section taken by the commissioner, except the formulation of regulations of general application. In cases involving extraordinary circumstances requiring immediate action, the commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

21. Tenn. Code Ann. § 45-15-105 provides that:

(a) No person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which such business is conducted. Any person engaged in the business of title pledge lending on November 1, 2005, under a license issued by the county clerk, may continue to engage in the business without a license issued by the commissioner, until the commissioner has acted upon the application for a license, if the application is filed by December 31, 2005.

(b) Any loan made without a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the pledgor in connection with the title pledge agreement or property pledge agreement. The person making the loan shall return to the pledgor the pledged property, the titled personal property pledged, or the fair market value of such titled personal property, and all principal, interest, and any other fees paid by the pledgor. The pledgor is entitled to receive reasonable attorney's fees and costs in any action brought by a pledgor to recover from the person making the loan, the pledged property, the titled personal property, and the principal, interest and any fees paid by the pledgor.

22. Tenn. Code Ann. § 45-15-118(a) provides that:

(a) If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant to this chapter, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant to the chapter;

(2) Require the refund of any fees collected by such person in violation of this chapter; and

(3) Order the person to pay the commissioner a civil penalty of not more than one thousand dollars (\$ 1,000) for each transaction in violation of this chapter or each day that a violation has occurred and continues.

23. The Findings of Fact in Section II of this **ORDER** demonstrate that Highway 64 Motor Company Title Loans has operated as a title pledge lender in this State without first obtaining a license from the Commissioner.

24. Based on the Findings of Fact, the Commissioner concludes that the acts of Highway 64 Motor Company Title Loans present a threat of harm to the public, as the licensure and regulatory oversight of title pledge lending is necessary to prevent frauds upon borrowers.

25. Based on the Findings of Fact, the Commissioner concludes that since Highway 64 Motor Company Title Loans acted as a title pledge lender without a license since at least November 1, 2005 that it should 1) cease and desist from further violations of the Act; refund all fees, principal and interest it collected in violation of Tenn. Code Ann. § 45-15-105 and pay a civil money penalty of five thousand dollars (\$5,000.00).

#### **IV. ORDER**

1. **WHEREFORE**, in consideration of the foregoing, it is **ORDERED** that Respondent, Highway 64 Motor Company Title Loans, pursuant to the provisions of Tenn. Code Ann. § 45-1-107(a)(4), (c) and Tenn. Code Ann. § 45-15-118(a)(1); shall immediately **CEASE AND DESIST** from any further violations of the Act.

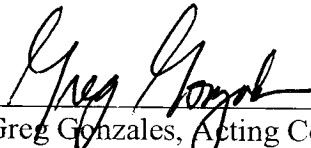
2. It is further **ORDERED** that the Respondent **REFUND ALL FEES** collected in violation of the Act and any rule promulgated thereunder, pursuant to Tenn. Code Ann. § 45-15-118(a)(2). The Respondent shall, within thirty (30) days of the effective date of this **ORDER**, make payment in full by check made payable to each consumer affected and shall mail and/or deliver said check to the last known address for each such consumer. The Respondent shall provide the Department written notice identifying each refund made including the name of the consumer and the amount of the refund.



3. It is further **ORDERED** that the Respondent be **ASSESSED A CIVIL MONEY PENALTY** of five thousand dollars (\$5,000.00) pursuant to Tenn. Code Ann. § 45-15-118(a)(3), which shall be paid within thirty (30) days of the effective date of this **ORDER**. The Respondent shall make the check payable to the Tennessee Department of Financial Institutions and shall deliver said check to the attention of: Michael Igney, Assistant Commissioner/Compliance Division, 4<sup>th</sup> Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219.

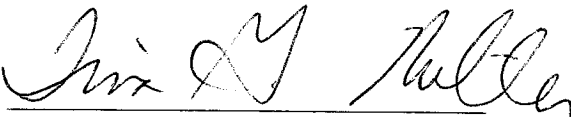
**IT IS SO ORDERED.**

**ENTERED** this the 25<sup>th</sup> day of October, 2006.

  
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Greg Gonzales, Acting Commissioner  
Department of Financial Institutions

**EFFECTIVE DATE OF ORDER:** 10/25/06

**APPROVED FOR ENTRY:**

  
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Tina G. Miller (BPR #12644)  
Department of Financial Institutions  
4<sup>th</sup> Floor, Nashville City Center  
511 Union Street  
Nashville, Tennessee 37219  
Tel. (615) 741-0346 Fax: (615) 253-1875

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Final Order and Final Order has been served on Russell Haynie by hand delivery at the address below on this 27 day of October, 2006.

Kevin Hicks      10-27-06  
Examiner Signature

Address:

593 Mulberry  
Selmer, TN 38375  
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